IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1026 OF 2003

Ramesh Laxman Bote]
Age 19 years, Occupation Labour]
Residing at Ganesh Nagar,]
Telco Road, Near Water Tank]
Bhosari, Pune (At present]
detained in Yerawada Central]
Central Prison, Pune 411 006] ..Appellant
(Ori. Accused)

versus

The State of Maharashtra]
(through Officer in charge]
Pimpri Police Station, Pune] ..Respondents

None for the Appellant / Accused.

Mr. D. R. More, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
SMT. NISHITA MHATRE, JJ.

DATE : 5TH JUNE, 2007.

ORAL JUDGMENT : (Per : D. G. DESHPANDE, J.) :

1. This matter was on board for hearing on 4.6.2007. Nobody appeared for the appellant - accused. We heard the learned APP and kept the matter today. Today also nobody appeared for the appellant / accused, and, therefore, we proceeded to hear and dispose of the matter on the basis of the judgment of the Supreme Court in the case of **Bani**

Singh & others vs. State of U.P. reported in 1996 Cri.L.J. 3491.

2. The accused has filed this appeal challenging his conviction under Section 302 of the IPC by which he is sentenced to imprisonment for life, fine, and imprisonment for six months and fine for offence under Section 324 of the IPC.

3. This is a case where for a very trifle reason the accused inflicted blows after blows on the person of the deceased Bhagwat Mane by Rampuri knife and killed him. There was one more Juvenile offender but he has been tried under the Juvenile Justice Act. It appears that the deceased Bhagwat Mane - accused and other injured were all friends. Deceased was demanding Rs.10/- from the accused. Accused told him that he does not have money and then he told the deceased to wait near Salvekar Hospital. Thereafter the deceased Bhagwat Mane, complainant - Sanjay Pawar and one Raju Chapalkar waited near Hockey Stadium. Then accused - Ramesh Bote and Juvenile Offender Prakash Shantaram Pawar came there. Deceased again demanded Rs.10/- for consuming "Goa Gutka". Accused told him that he was

not having change. Then deceased went on demanding Rs.3/- or Rs.2/- or Rs.1/-. Accused did not pay anything but lastly accused took out a Jambia from his pant saying that he would give Rs.1/- and then assaulted deceased Bhagwat Mane with the said Jambia causing injuries to his left hand, chest, ribs and when complainant - Sanjay Pawar tried to save deceased Bhagwat Mane, accused also assaulted him on his right hand's wrist with that Jambia. At that time Raju Chapalkar also tried to rescue the deceased. But thereafter accused ran away.

4. Thereafter Bhagwat Mane was taken to the hospital of Dr. Savlekar and on advise of Dr. Savlekar he was removed to Yashwantrao Chawan Memorial Hospital as the condition of Bhagwat Mane was serious. From Y.C.M. Hospital he was shifted to Sassoon Hospital, Pune, where he succumbed to his injuries at about 12.40 mid night. Then Sanjay Pawar lodged complaint against the accused. Offence was registered. Investigation was started. Panchnama was drawn. Incriminating articles from the spot were seized. Dead body of Bhagwat Mane was sent for post mortem and then statement of witnesses were recorded. Jambia was received at the instance

of the accused so also blood stained clothes and then charge sheet came to be filed.

5. The trial court believed the case of the prosecution and convicted the accused and hence this appeal.

6. It is pertinent to note from the post mortem report that there were as many as 13 injuries to the deceased, followed by internal damage to the lung and it is clear that the deceased was brutally assaulted for the minor demand of Rs.1/- i.e. starting from Rs.10/- and coming down to Rs.1/- for purchasing "Goa Gutka".

7. The most important witness of the prosecution is Sanjay Pawar who lodged his complaint. He has given the story as stated above i.e. the cause of dispute, the persons present, taking out knife by the accused and inflicting blows after blows and causing injury to the witness himself on the wrist. He stated about filing complaint Exhibit 21 showing spot of offence to the police. He identified the photograph of the deceased. He was subjected to cross examination but

apart from some minor omissions on record, there is absolutely nothing to disbelieve this witness. Those minor omissions are about reducing the demand from Rs.10/- to Rs.2/-. This witness is supported by P.W. 2 Raju Chapalkar, who was also present at the spot. He has given some details in his evidence including the demand by the deceased from Rs.10/- to Rs.1/- and taking out of pen knife by the accused and then inflicting blows at the chest of the deceased and other parts including abdomen, waist etc. He also stated that accused caused injuries to Sanjay Pawar. In the cross-examination also there is nothing to disbelieve the witness.

8. Evidence of P.W. 1 and 2 is corroborated by P.W. 3 Dr. Rajaram Vasudev Savlekar, who runs dispensary. He has stated that one injured person was brought in the hospital for treatment at 9.30 p.m. His condition was serious. He informed the police and thereafter the injured person was taken to Y.M.C. Hospital. Sanjay Pawar P.W. 1 was examined by Dr. Shailaja. She noted that she examined him on 9.45 p.m.; that he had abrasion on right forearm just above wrist joint, the age of the injury was less than six hours and the abrasion was

possible by Article 9. If Sanjay Pawar intervened in the scuffle, that injury was possible by the knife. The patient gave history of assault, that is, he was assaulted at 9 p.m.

9. P.W. 6 is ASI Shrikant Harkpal, he has stated that on 21.11.2001, he was in charge of Sant Tukaram Police Chowky, Pimpri. He received information on phone that a boy was assaulted at Nehru Nagar and was admitted to Y.C.M. Hospital for treatment and he has recorded complaint of Sanjay Pawar. He then went to Y.C.M. Hospital. He found that Bhagwat Mane was not in a position to speak. Medical Officer gave his opinion in that regard. Then he went to the scene of offence and drew the panchnama, collected blood stained earth and sample of earth. He attached slippers. Then he went to Sassoon Hospital and learnt about the death of the victim and then he sent the body for post mortem. The panchnama proved on record corroborated the testimony of eye witnesses to the effect that the incident took place at the time and place given by P.W. 1 and 2. Post mortem report is proved by P.W. 7 Dr. Shrikant, the report is at Exhibit 33. Then P.W. 8 Raju Jadhav is examined as a witness of

discovery under Section 27 of the Evidence Act. At the instance of the accused, a pen knife was recovered which was hidden under the grass. Memorandum was prepared about the statement given. Then the accused led the police party to the spot where he had hidden the knife. He proved panchnama Exhibit 35. The knife had no blood stains. Prosecution also examined P.W. 9 P.I. - Shamrao Mohite - the investigating officer regarding different steps taken during investigation. C.A. report is also on record.

10. The learned APP contended that the prosecution has been successful to prove guilt of the accused beyond reasonable doubt. There are two eye witnesses to the incident. P.W. 1 and 2, one of them is injured, which shows the presence of P.W. 1 at the spot and the testimony of P.W. 1 and 2 is corroborated by the medical evidence. Accused had number of injuries on his person. There is no enmity between the parties. There is no reason why P.W. 1 and P.W. 2 would falsely implicate the accused. He also contended that simple defence of denial is of no use. Our attention was also drawn by the learned APP to question No.45 put to the

accused by the trial court in the examination under Section 313. The same reads as under:

Q.No.45 Do you want to say anything else on your behalf in this case?

Ans. Bhagwant Mane, Sanjay Pawar, and Raju Chafalkar came from Pimpri and they met me at Salvekar Hospital on that day. Myself and Prakash Pawar started proceeding towards Nehru Nagar. They asked me as to over I was proceeding. I told from, I was proceeding to Nehru Nagar. They told me to wait for five minutes. When I came back. From Nehru Nagar. I found that, Bhagwat Mane, Raju Chafalkar and Sanjay they were standing near Salvekar Hospital. Bhagwat Mane demanded Rs.10/- from me. I told him that, I was having money. He demanded Rs.3/- from me. I told him that I was not having money. I told him that, since he saw a picture I might be having money. He demanded money from Raju Chafalkar. Hence after cation took place between Raju Chafalkar and Bhagwat Mane. At that time myself and Prakash Pawar left the place and we went to our house. I did not know what have deposed thereafter police have filed a false case. I do not know anything the incident.

Police beat me, I do not point out any penknife. Police obtained my signatures on a blank paper."

From this statement or reply, it is clear that accused support the story of the prosecution about

demand of Bhagwat Mane and ultimately reduction to Rs.3/-. Therefore, in this background it has to be held that the trial court was fully justified in convicting the accused. Judgment is sound and logical and reasonable, and therefore no interference is called for.

11. In the result we pass the following order:

ORDER

Appeal is dismissed.

The conviction and sentence imposed by the accused is maintained.

(SMT. NISHITA MHATRE, J.) (D.G. DESHPANDE, J.)